IN THE MATTER OF : BEFORE THE

STEVEN L. SALES AND DONNA : HOWARD COUNTY

M. SALES

BOARD OF APPEALS

Petitioners

HEARING EXAMINER

BA Case No. 09-010C

## **DECISION AND ORDER**

On June 1, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Steven L. and Donna M. Sales for conditional use approval to park and store six school buses in an RC-DEO (Rural Residential: Density Exchange Option), filed pursuant to Section 131.N.44 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code.

I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Steven L. Sales and Donna M. Sales, the Property owners, testified in support of the petition. No one appeared in opposition to the petition.

## FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The Petitioners are the owners of the subject property, which is located on the north side of Annapolis Rock Road about 0.2 miles east of MD 94 (Woodbine Road). The subject

property is located in the 4<sup>th</sup> Election District and is also known as 17698 Annapolis Rock Road (the "Property"). The Property is referenced on Tax Map 19, Grid 6, as Parcel 15.

- 2. The Site. The 2.442-acre, somewhat parallelogram-shaped Property is improved by a one-story detached single-family dwelling sited in the southeastern portion of the Property, facing and about 82 feet from Annapolis Rock Road. To the dwelling's northeast is a 20' by 30' garage associated with the residential use. A second, 30' by 41' garage is sited in the northwestern portion of the Property, about 41 feet from the west property line and 215 feet from the front property line. This garage will be part of the proposed bus use. The Property's eastern and northern area is pasture. A 30' by 15' area labeled "stalls" and a 10' by 20' chicken coop are located in the northwest area.
- 3. The Property is accessed from a paved, "U" shaped driveway off Annapolis Rock Road. The driveway continues north and east beyond the "U" to provide access and parking for the dwelling and associated garage. A second, aggregate section runs along the western property line and to the main driveway's north and west to access the rear garage and proposed bus parking area. Mature trees run along the west and east property lines. The well lies in the southwest corner, the septic area, behind the dwelling.
- 4. <u>Vicinal properties</u>. All adjacent properties are also zoned RC-DEO. On the north side of Annapolis Rock Road, by Woodbine Road, Parcels 1 and 2 are each improved with a single-family detached dwelling. Parcel 16 is an unimproved 1.2-acre site. The 100.17-acre State of Maryland Department of Forests and Parks Parcel 23 abuts the western Property line. Parcel 12, on the Property's north and east side is the 58.26-acre, Maryland Department of Forests and Parks, Patuxent River State Park lot.

On the south side of Annapolis Rock Road, Parcels 21, 4, 5, 6, and 9 are each improved with a single-family detached dwelling. Parcels 17 and 18 are unimproved lots of the Maryland Department of Forests and Parks, Patuxent River State Park.

- 5. Roads. Annapolis Rock Road has two travel lanes within a 30-foot right of way. It is designated as a Scenic Road in the Howard County Scenic Roads Inventory. The posted speed limit is 30 miles per hour.
- 6. <u>Water and Sewer Service</u>. The Property lies within the No Planned Service Area. It is served by private water and sewer facilities.
- 7. The General Plan. The 2000-2020 General Plan designates the Property as "Rural Conservation" on the 2000-2020 Policies Map. The Transportation Map 2000-2020 depicts Monticello Drive as a Local Road.
- 8. The Petitioner is requesting conditional use approval for a school bus service operation to park and store six school buses on the Property. The buses would leave the Property Mondays through Friday between 6:30 a.m. and 9:30 a.m. in the mornings and return between 9:00 a.m. and 10:00 a.m. In the afternoon, the buses would leave and return between 1:45 p.m. and 5:00 p.m., with some variation for school schedules. Up to six employees will park their personal vehicles on the Site while driving the buses. No special lighting is proposed and two outdoor vapor lights are currently in use. The buses will be cleaned on the property and light maintenance will also be performed on-site. No weekend hours of operation are proposed.
- 9. The Conditional Use Plan depicts five vehicle parking spaces within the paved driveway near the residence and six bus parking spaces next to the conditional use garage. The nearest bus parking space to a property line is 30 feet from the western parking lot. No building

additions or new structures are proposed. The existing driveway will provide access to the conditional use portion of the Property.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

- I. General Criteria for Conditional Uses (Section 131.B)
- 1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:
  - a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and
  - b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as "Rural Conservation." School bus parking and storage is presumptively compatible with residential area land use.

The Nature and Intensity of the Use. It is the nature of a school bus service to vary in intensity of use. In the early morning and afternoon hours the bus operators arrive in their own vehicles, warm up the buses, and depart for off-site trips. The intensity of use is minimal between runs, and during overnight storage and weekends. Existing woods along the Property's west side will buffer the use and the dwellings on adjacent properties are at some distance from

the use. Because privately owned and operated school bus operations are common uses in rural areas, the proposed use is harmonious with the land use and policies indicated in the General Plan for the Rural Conservation land use designation.

The size of the site in relation to the use. The operation would be concentrated in the general central portion of the 2.442-acre Property'. According the Conditional Use Plan, the bus operation would meet all use setback requirements. The site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. There is no evidence that the traffic along Annapolis Rock Road would be impaired by the use. The existing driveway will continue to provide access to the Conditional Use site and it appears the ingress/egress drive will continue to provide safe access with adequate sight distance.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed conditional use would be combined with a permitted use, a residential dwelling. Additionally, the combination of uses is appropriate, given that all uses meet or exceed setback requirements.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the

beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an RC district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioners have met their burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a school bus service operation in an RC district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The Petitioners propose to use their Property to park and store six school buses and for vehicle circulation in an area that is reasonably separated from vicinal dwellings. According to the TSR, the small parking area and driveway are unlikely to cause noise or dust. There is no evidence that the use will cause fumes, odors, glare, vibrations, or hazards. I therefore conclude these inherent operational adverse effects will be not greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The detached garage and bus parking, storage and circulation area are screened by an existing woods. I therefore conclude the location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The parking areas are adequate to support the use and the bus parking and storage, and the circulation driveway is accessed from the private ingress/egress drive, which minimizes the use's impact on adjacent properties. No loading or refuse areas are proposed. The existing screening will also minimize the use's adverse impacts.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The bus driveway appears to provide safe access, with adequate sight distance.

# III. Specific Criteria for School Buses (Parking and Storage) (Section 131.N.44)

A conditional use may be granted in the RC, RR, R-20 or R-12 Districts for the parking and storage of more school buses than allowed by these regulations, provided that:

a. All such vehicles parked or stored outside of a structure shall be screened from adjoining properties.

As discussed above, the buses will be screened from adjoining properties, in accordance with Section 131.N.44.a.

b. No such vehicles shall be parked or stored within the structure setback requirements of the district in which they are located.

According to the Conditional Use Plan, all vehicles will be parked or stored outside the structure setbacks, in accordance with Section 131.N.44.b.

c. Any parking spaces occupied by such vehicles shall be provided in addition to all other required parking spaces.

The bus parking area and the area used by the bus operators for personal parking is provided in addition to the required residential parking. The petition accords with Section 131.N.44.c.

d. Only minor repairs to such vehicles shall be permitted. In no case shall body work, engine rebuilding, engine reconditioning or collision services be permitted.

The petition states that only minor repairs to the buses will be performed on site, in accordance with Section 131.N.44.b.

e. The storage or parking of the number of vehicles registered as school buses on lots or parcels in the RC, RR, R-20 and R-12 Districts on the effective date of this amendment (Zoning Board Case 715, effective July 25, 1978) shall be deemed valid nonconforming uses in those districts.

This section does not apply, is the proposed use is not a valid nonconforming use.

### ORDER

Based upon the foregoing, it is this 15<sup>th</sup> day of June 2009, by the Howard County Board of Appeals Hearing Examiner, ORDERED:

That the petition of Steven L. and Donna M. Sales for a School Bus (Parking and Storage) conditional use for six buses in an RC-DEO district is **GRANTED**;

### Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use as described in the petition and as depicted on the Conditional Use Plan, and not to any other activities, uses, or structures on the Property..

### HOWARD COUNTY BOARD OF APPEALS

**HEARING EXAMINER** 

Michala I La Fairra

Date Mailed:

<u>Notice</u>: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.